

In the Matter of Michael Vanartsdalen,
Juvenile Justice Commission
DOP Docket No. 2006-516
(Merit System Board, decided July 19, 2006)

Michael Vanartsdalen, a former Correction Sergeant, Juvenile Justice, with the Juvenile Justice Commission, Department of Law and Public Safety, represented by D. William Subin, Esq., appeals the denial of sick leave injury (SLI) benefits. It is noted that the appellant retired from State service, effective January 1, 2006.

By way of background, on December 10, 2004, the appellant filed an Employer's First Report of Accidental Injury or Occupational Disease indicating that he sustained injuries to his left shoulder and right knee as a result of restraining residents. The appointing authority granted the appellant SLI benefits from December 10, 2004 through December 9, 2005. However, for the period of time the appellant was out of town visiting family from June 7, 2005 through June 28, 2005, the appointing authority denied him SLI benefits and charged him 16 vacation days for his absence from work. The appointing authority relied on its policy, which states that "Employees who have scheduled vacation while in [SLI] status will utilize personal benefit time as applicable."

On appeal to the Merit System Board (Board), the appellant contends that his December 10, 2004 injury prevented him from returning to work, and thus, his vacation balance was wrongfully charged. He states that on May 10, 2005, Dr. Robert Frederick, a State-authorized physician, discontinued further physical therapy treatment, but ordered a functional capacity examination and documented his inability to return to work. The appellant was scheduled for the examination on June 12, 2005. On June 6, 2005, the appellant was seen by Dr. Mark Kahn, a State-authorized physician, for a "second opinion" examination. Dr. Kahn also documented that the appellant was unable to return to work due to his work-related injury. The appellant submits a letter dated June 7, 2005, advising that his functional capacity evaluation was being rescheduled to July 5, 2005. The appellant indicates that the examination was rescheduled from June 12, 2005 in order to facilitate the "second opinion" examination with Dr. Kahn. Therefore, the appellant contends that he could not return to work during the applicable period of time and that he was not "unavailable" for treatment as there were no further physical therapy treatments scheduled. He also did not miss any appointments. Thus, he asserts that his absence from home at the time should not be treated as vacation. Moreover, the appellant argues that the appointing authority's policy cannot stand since it contradicts SLI regulations which provide for a leave of absence with pay to

an employee whose absence is due to a work-related injury. *See N.J.A.C. 4A:6-1.6(b)*. Therefore, he requests that his appeal be granted.

In response, the appointing authority maintains that the appellant was properly charged 16 vacation days for the period of time he was away with his family. It states that it is the policy of the Juvenile Justice Commission to charge employees with their own personal benefit time when they schedule a vacation during the period of receipt of SLI benefits. The appointing authority notes that had the appellant's injury prevented him from taking his scheduled vacation, his personal benefit time would not have been deducted. Therefore, it contends that additional SLI benefits should be denied.

CONCLUSION

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. *See N.J.A.C. 4A:6-1.6(c)* and *N.J.A.C. 4A:6-1.7(h)*. Additionally, *N.J.A.C. 4A:6-1.6(b)* states that an employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

The record indicates that the appellant sustained a work-related injury on December 10, 2004 and was found eligible to receive the maximum of one year of SLI benefits from December 10, 2004 through December 9, 2005. *See N.J.A.C. 4A:6-1.6(b)3*. However, the appointing authority denied him SLI benefits from June 7, 2005 through June 28, 2005, stating that it is the policy of the appointing authority to charge employees with their own personal benefit time when they schedule a vacation during the period of receipt of SLI benefits. In *In the Matter of Malinda Woods-Dupree* (MSB, decided January 11, 2006), the Board denied SLI benefits to an employee during the time period she ceased medical treatment for her work-related injury and departed on vacation. In the instant matter, the appellant has demonstrated that he did not cease medical treatment as no further physical therapy treatment was scheduled. Moreover, there is no evidence that the appellant missed any medical appointments during the period in question or that he rescheduled appointments due to his family visit. Under these circumstances, there is not a sufficient basis to deny SLI benefits. Therefore, according to uniform SLI regulations, the appellant has met his burden of proof and has established entitlement to additional SLI benefits.

ORDER

Therefore, it is ordered that this appeal be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.